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CYRUS R. VANCE, JR.
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November 5, 2021

VIA EMAIL

The Honorable David S. Jones

United States Bankruptcy Court, Southern District of New York

One Bowling Green

New York, NY 10004

Email: jones.chambers@nysb.uscourts.gov

Re: In the Matter of Kossoff PLLC
Case No. 21-10699 (DSJ)

Dear Judge Jones:

On Tuesday, November 2, 2021, Albert Togut, in his capacity as the Chapter 7 Interim Trustee (the "Trustee") in the above-captioned matter, filed with this Court motion papers seeking to compel the New York County District Attorney's Office ("DANY") to disclose secret grand jury materials. DANY received the motion papers on Wednesday, November 3, 2021. In his papers, the Trustee required a response by Tuesday, November 9, 2021, for a hearing scheduled on November 16, 2021. DANY, through its attorneys, has asked the Trustee for an extension of time to respond to this motion, until December 21, 2021. The Trustee refused to consent to that request, citing the need for haste. DANY believes that the current schedule is unreasonable and not conducive to a fair consideration of the Trustee's motion. DANY therefore requests an adjournment of time, over the Trustee's objection.

As noted, DANY received the Trustee's motion on November 3, 2021, meaning that it has less than one week to respond to the motion under the Trustee's timeline. The Trustee has taken the highly unusual step of demanding materials from a law enforcement agency that were gathered during the course of an ongoing criminal investigation. The motion poses complex legal issues involving state and federal law. DANY believes that it will ultimately prevail in opposing the motion because of the important equities at stake, but it is unable to provide a considered explanation of its position for the Court under the expedited timeframe set by the Trustee.

The amount of time that DANY is requesting is comparable to the amount of time that the Trustee himself took to file a prior motion to compel and the instant motion. The Trustee was appointed on May 12, 2021 and was granted the ability to conduct Rule 2004 discovery on May 24, 2021. Approximately one month later, the Trustee filed a motion in the New York State Supreme Court, Criminal Term, seeking to compel DANY to provide access to grand jury materials. Justice Althea Drysdale denied that motion on September 8, 2021.

The order was filed with the New York State Supreme Court clerk's office and mailed to both parties on September 27, 2021. To our knowledge, the Trustee has not sought to appeal Justice Drysdale's decision. Rather, approximately five weeks after the denial, the Trustee filed the instant motion to compel in this Court. Now, after taking one month to file his motion to compel in State Court and an additional five weeks after the denial of that motion to make the instant motion, the Trustee is demanding that DANY respond to his motion in a single week. The timeline alone makes clear that this demand is inequitable and unreasonable. Notwithstanding his claim that time is of the essence, the Trustee has had the benefit of weeks to make the legal arguments in his moving papers. It would be appropriate for DANY to have a comparable amount of time to respond.¹

For the reasons stated above, DANY requests until December 21, 2021 to file its response to the Trustee's motion to compel the disclosure of secret grand jury materials.

Respectfully submitted,



Catherine McCaw
Assistant District Attorney

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¹ DANY is requesting six weeks, instead of five, because of the intervening Thanksgiving holiday.